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FILED
DISTRICT COURT OF GUAM

JUN 26 2007 *mba*

MARY L.M. MORAN
CLERK OF COURT

4 *Attorneys for Defendant*

5
6 UNITED STATES DISTRICT COURT

7 DISTRICT OF GUAM

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9 UNITED STATES OF AMERICA,)

CRIMINAL CASE NO. 07-00026

10 Plaintiff,)

11 vs.)

**MOTION FOR DISCLOSURE OF
GRAND JURY TRANSCRIPT UNDER
FED. R. CRIM. P. 6(e)(3)(E)(ii).**

12 BRIAN ELM,)

13 Defendant.)

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15 **NOW COMES** Brian Elm, by and through his attorneys of record, Teker Torres & Teker,
16 P.C., by and through counsel, Joseph C. Razzano, and requests the Court to disclose the Grand Jury
17 Transcript which secured the Indictment filed by the United States on March 28, 2007.

18 **BACKGROUND**

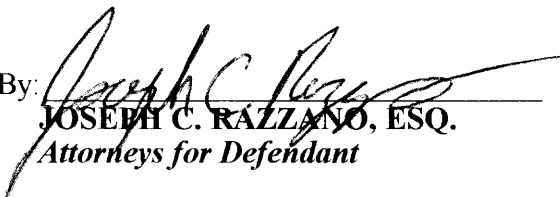
19 As the court is well aware, during the hearing on Mr. Elm's Motion *in Limine*, the United
20 States stated unequivocally that the law in Ninth Circuit allowed the United States to put on an
21 inconsistent declarations case under 18 U.S.C 1623(c). The United States assertion is wrong under
22 *U.S. v. Jaramillo*, 69 F.3d 388, and because of the United States' misunderstanding of the law and
23 their intention to proceed on an incorrect theory of law, it is more likely than not that the United

1 States also misinterpreted the law at the Grand Jury stage of the proceedings and instructed the
2 Grand Jury as to the wrong law. Therefore under Fed. R. Crim. P. 6(e)(3)(E)(ii), the Defendant now
3 requests the Court authorize disclosure of the Grand Jury transcript because a solid "ground exists
4 to dismiss the indictment because of a matter that occurred before the Grand Jury." In the event that
5 the United States put on an inconsistent declarations presentation at the Grand Jury stage, the Grand
6 Jury was misinformed as to the state of the law. This misinformation and failure to properly instruct
7 the Grand Jury at the indictment stage goes to the very heart and integrity of the Grand Jury
8 Proceeding. The Indictment, if it is revealed was obtained by a misinterpretation or misrepresentation
9 as to the state of law, must be dismissed because the Grand Jury would not have issued a true bill and
10 Defendant would be subject to trial without the benefit of a true and pure Grand Jury Review.

11 In conclusion, Mr. Elm requests that the Grand Jury Transcripts be disclosed so that an
12 independent review by his counsel can be made and objections can be heard as to the validity of the
13 Grand Jury Proceeding in light of the United States admission that they misunderstood the law in the
14 Ninth Circuit. As the court is well aware, nothing goes to the heart of the American Legal System
15 as the integrity of the Grand Jury. In this case, it is the integrity of the very Grand Jury Proceeding
16 that is at issue. Therefore, Defendant respectfully requests the Grand Jury Transcript be made
17 available for inspection and review to determine that a true bill was returned.

18 Respectfully submitted this 26th day of June, 2007.

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20 **TEKER TORRES & TEKER, P.C.**

21 By: 
22 **JOSEPH C. RAZZANO, ESQ.**
23 *Attorneys for Defendant*

1 **CERTIFICATE OF SERVICE**

2 I, JOSEPH C. RAZZANO, hereby certify that a true and exact copy of Defendant Brian
3 Elm's Motion for Disclosure of Grand Jury Transcript Under Fed. R. Crim. P. 6(e)(3)(E)(ii), was
4 served via hand delivery on June 26, 2007, on Assistant U.S. Attorney, Karon V. Johnson, Esq.,
5 Office of the United States Attorney, 108 Hernan Cortez Avenue, Suite 500, Hagåtña, Guam 96910.

6 DATED at Hagåtña, Guam, on June 26, 2007.

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9 **JOSEPH C. RAZZANO**
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